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13 Attorneys for Defendant ARISTA NETWORKS, INC.

14 UNITED STATES DISTRICT COURT
15 NORTHERN DISTRICT OF CALIFORNIA
16 SAN JOSE DIVISION

17 CISCO SYSTEMS, INC.,

18 Plaintiff,

19 v.

20 ARISTA NETWORKS, INC.,

21 Defendant.
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Case No. 5:14-cv-05344-BLF (NC)

**DECLARATION OF ELIZABETH K.
MCCLOSKEY IN SUPPORT OF
PLAINTIFF CISCO SYSTEMS, INC.'S
ADMINISTRATIVE MOTION TO FILE
UNDER SEAL CONFIDENTIAL
INFORMATION IN CISCO'S REPLY TO
ARISTA'S MOTION TO STRIKE
EXPERT OPINION TESTIMONY OF
CATE M. ELSTEN**

Judge: Hon. Beth Labson Freeman

Date Filed: December 5, 2014

Trial Date: November 21, 2016

1 I, ELIZABETH K. MCCLOSKEY, declare:

2 1. I am an attorney licensed to practice law in the State of California and am an
3 associate with the law firm of Kecker & Van Nest LLP, located at 633 Battery Street,
4 San Francisco, California 94111, counsel for Defendant Arista Networks, Inc. (“Arista”) in the
5 above-referenced action. Unless otherwise stated, the facts I set forth in this declaration are based
6 on my personal knowledge or knowledge I obtained through my review of corporate records or
7 other investigation. If called to testify as a witness, I could and would testify competently to such
8 facts under oath.

9 2. I submit this declaration in support of the Administrative Motion to File Under
10 Seal Confidential Information in Cisco’s Reply in Support of its Motion to Exclude Expert
11 Opinion Testimony of Cate M. Elsten (“Motion to Seal”) filed by Plaintiff Cisco Systems, Inc.
12 (“Cisco”) on August 26, 2016 (D.I. 498). I have reviewed Cisco’s Motion to Seal and the Civil
13 Local Rules of this Court governing such motions, and submit this supporting declaration under
14 Civil L.R. 79-5(e).

15 3. Cisco’s Motion to Seal seeks to file under seal documents and information
16 submitted in support of its *Daubert* motion related to Arista’s expert Cate M. Elsten, which is a
17 non-dispositive motion. Because Cisco’s Motion to Seal relates to non-dispositive motions, the
18 documents and information that the parties request to file under seal are **not** subject to a strong
19 presumption of public access. *See Kamakana v. City & County of Honolulu*, 447 F.3d 1172, 1180
20 (9th Cir. 2006). Rather, the “good cause” standard of Rule 26(c) of the Federal Rules of Civil
21 Procedure applies to the material that Cisco’s Motion to Seal seeks to withhold from public view.
22 *Id.* at 1179. Civil Local Rule 79-5 further requires that a party seeking to seal information and
23 documents “establish[] that the document, or portions thereof, are privileged, protectable as a
24 trade secret or otherwise entitled to protection under the law.” Civil L.R. 79-5(b). The sealing
25 request must also “be narrowly tailored to seek sealing only of sealable material.” *Id.* I submit
26 this declaration to provide additional facts in support of Cisco’s Motion to Seal, and to provide
27 facts establishing that the “good cause” standard has been met for materials that Arista seeks to
28 file under seal.

4. For purposes of a motion to seal, I understand that a “trade secret” is “any formula, pattern, device or compilation of information which is used in one’s business, and which gives him an opportunity to obtain an advantage over competitors who do not know or use it.” *See In re Elec. Arts, Inc.*, 298 F. App’x 568, 569–70 (9th Cir. 2008) (nonprecedential) (quoting Restatement (First) of Torts § 757 cmt. b (1939)) (applying the Restatement’s definition of trade secret in the record-sealing context); *Clark v. Bunker*, 453 F.2d 1006, 1009 (9th Cir. 1972) (adopting the Restatement’s definition of trade secret).

5. I further understand that good cause—indeed, compelling reasons—may exist to file materials under seal when, for example, court filings could be used for improper purposes, such as “to gratify private spite, promote public scandal, circulate libelous statements, or release trade secrets.” *Kamakana*, 447 F.3d at 1178–79 (citation omitted). I further understand that good cause and compelling reasons may exist where court filings contain or discuss confidential source code, *see Apple, Inc. v. Samsung Electronics Co., Ltd.*, No. 11-cv-1846, D.I. 2190 at *3 (Dec. 10, 2012); internal and non-public procedures of financial institutions, *see Cowan v. GE Capital Retail Bank*, No. 13-cv-03935-BLF, 2015 WL 1324848, at *1-3 (N.D. Cal. Mar. 24, 2015); information about an entity’s confidential “business performance, structure, and finances that could be used to gain unfair business advantage against them,” *Schwartz v. Cook*, No. 15-cv-03347-BLF, 2016 WL 1301186, at *2 (N.D. Cal. Apr. 4, 2016); “highly sensitive information regarding [an entity’s confidential] product architecture and development,” *Delphix Corp. v. Actifio, Inc.*, No. 13-cv-04613-BLF, 2014 WL 4145520, at *2 (N.D. Cal. Aug. 20, 2014); emails containing confidential information about an entity’s “business practices, recruitment efforts, and discussions regarding potential partnerships with other product manufacturers,” *see Koninklijke Philips N.V. v. Elec-Tech International Co., Ltd.*, No. 14-cv-02737-BLF, 2015 WL 581574, at *1–2 (N.D. Cal. Dec. 10, 2015); and “information regarding non-public recruitment efforts and business practices” of a party. *See id.* at *2-3.

6. Cisco submitted a declaration in support of its Motion to Seal (D.I. 498-1) that identified and attached highlighted copies of material that should be sealed. Per the instructions provided on the Northern District of California’s website, this declaration is drafted so that it does

1 not contain or reveal confidential information, and therefore does not need to be filed under seal.
2 See <http://www.cand.uscourts.gov/ecf/underseal>.

3 7. Arista seeks to file under seal the highlighted portions of its Cisco's Reply in
4 Support of its Motion to Exclude Expert Opinion Testimony of Cate M. Elsten (D.I. 500). There
5 is good cause to seal those portions of Cisco's Reply because they discuss and reveal internal,
6 non-public, and sensitive information regarding Arista's product development and design process,
7 sales and marketing strategies, and customer support. See *In re Elec. Arts, Inc.*, 298 F. App'x at
8 569–70; *Delphix*, 2014 WL 4145520, at *2; *Koninklijke Philips*, 2015 WL 581574, at *1–2; see
9 also *Schwartz*, 2016 WL 1301186, at *2 (discussing the harm that could result by the
10 dissemination of similar sensitive internal business information to competitors, who would find it
11 valuable).

12 Executed this 30th day of August 2016, at San Francisco, California.

13 I declare under penalty of perjury under the laws of the United States of America that the
14 foregoing is true and correct.

17 /s/ Elizabeth K. McCloskey
18 ELIZABETH K. MCCLOSKEY